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Testimony of
Francis X. Drapeau, Immediate Past Chair
Workers' Compensation Section, CBA
Before the Labor and Public Employees Committee

March 4, 2021

Good afternoon, Senator Kushner, Representative Porter, Senator Miner, Representative Polletta and members of the Labor and Public Employees Committee. Thank you for the opportunity to testify in support of S.B 907, "An Act Concerning Minor and Technical Changes to the Workers' Compensation Act."

My name is Francis Drapeau, and I am the immediate past chair of the workers' compensation section of the Connecticut Bar Association and the current chair of the section's legislative initiative committee. For over twenty-five years, I have represented injured workers in Connecticut. I am a board certified workers' compensation specialist, and for fourteen years, I served on the examining committee for board certification.

The workers' compensation section of the bar association has proposed legislation to "clean up" the current act and to remove three statutes that have been had no legal effect for many years. The section also supports the workers' compensation commission's four common sense technical amendments. In 2019, this bill (H.B. 7241) unanimously passed both this committee and the House.

Section 1. This would change the title of workers' compensation commissioner to "workers' compensation administrative law judge" to better reflect the adjudicatory nature of their work. The workers' compensation section supports this proposal as one of the most common questions injured workers pose to practitioners is, "What is a commissioner?" The answer: "They're like judges." This typical exchange illustrates the unnecessary confusion created by designating the system's adjudicators as commissioners rather than by simply calling them administrative law judges, which would for all parties add clarity to the role of the person presiding over their case.

Section 2. Our workers' compensation section supports the commission's common sense proposed amendment to reduce the number of face-to-face meetings of the commissioner's advisory board from twice per quarter to once per quarter. This conforms the statute to the contemporary business practice of groups communicating electronically and telephonically.

Section 3. Our workers' compensation section also supports the commission's proposal to eliminate the position of statistician to conform the statute to the long-standing administrative practice.

Section 4. Our workers' compensation section also supports the proposed deletion of the work "cassette" from the statutory requirement that the commissioner provide an "audio cassette recording" of formal hearings at cost. Most parties now prefer to receive a digital recording.

Section 5. Our workers' compensation section has proposed the repeal of Section 31-349 subsections (a) through (f), which originally allowed employers to transfer liability to the second injury fund after 104 weeks of payments when a work injury was made worse by a qualifying preexistent condition. This ability to transfer cases to the second injury fund was abolished for injuries occurring after July 1, 1995, and it has been fully obsolete since 1999.

The WCLIC provided the following comment:

> "A basic principle of workers' compensation law is that the employer takes the employee as he finds him or her at the time of an injury arising out of and in the course of employment. This principle means that the effects of preexisting conditions, latent tendencies or predispositions are fully compensable, when they increase the pathological effects of a work-related injury or disease.
>
> Section 31-349(a) of the general statutes established the threshold for transfer of liability for workers' compensation claims to the second injury fund in cases where a preexisting disability combined with a subsequent work-related condition to increase substantially the degree of the resulting disability. Section 31-349(a) thus partially codifies the broader principle that the effects of preexisting conditions or latent tendencies or predispositions are fully compensable, when they increase the pathological effects of a work-related injury or disease.
>
> One of the exceptions to the employer's full liability for the effects of preexisting conditions which increase the impairment of a body part or organ system affected by an occupational injury or disease or which magnify the effects of an occupational injury or disease is found in subsection (b) of section 31-349, which allowed employers to transfer liability to the second injury fund after 104 weeks of payments. This ability to transfer cases to the second injury fund was abolished for injuries

occurring after July 1, 1995, and it has been fully obsolete since 1999. Subsections (c) through (f) primarily address notice requirements for transfers to the second injury fund and are likewise also obsolete. The repeal of sections (b) through (f) is intended to clarify the law by eliminating these obsolete provisions, rather than intended to change the law.

The principle that the employer takes the injured worker as he finds him or her at the time of the work-related injury, however, is broader than Section 31-349(a), in that a preexisting condition, susceptibility or predisposition need not rise to the level of a prior disability in order for its effects to be compensable. Our supreme and appellate courts have long held that although cases in which the preexisting condition does not rise to the level of a disability do not meet the threshold for transfer to the second injury fund under Sec. 31-349(a), nevertheless the effects of such a non-disabling preexisting condition, susceptibility or predisposition are fully compensable if they magnify the effects of a work-related injury; in such non-transferrable cases, liability remained with the employer, as it does in all cases under the present statute, since the abolition of the role of the second injury fund in undertaking liability in subsequent-injury cases. Illustrative cases include Rowe v. Plastic Design, Inc., 37 Conn. App. 131 (1995); Jacques v. H.O. Penn Machinery Co., Inc. 166 Conn. 352 (1974) and Williams v. Best Cleaners, 237 Conn. 490 (1996). The repeal of Section 31-349 (b) through (f) is not intended to alter in any way either C.G.S. Sec. 31-349(a) or the long-standing case law applying section 31-349(a) and applying the broader principle that the employer takes the injured worker as he finds him or her at the time of the work-related injury."

Sections 6 and 7. These sections would simply remove any other statutory references to the obsolete 31-349 second injury fund transfers under section 4 of this bill.

Section 8. This would repeal two obsolete statutes, 31-298a and 31-304. Section 31-298a was enacted in 1981 to establish a panel of five to ten expert pulmonologists "for use in solving controverted medical issues in claims for workers' compensation due to occupational lung disease." The medical panel concept failed decades ago for several reasons, including:

a. The panel could not reach a consensus on a standard to deal with issues important to the commission, such as the role of asbestos exposure in the development of lung cancer.
b. Not enough qualified physicians were willing to participate.
c. The physicians who were willing to participate were frequently conflicted out on individual cases as they were often the claimant's attending physician or used as an expert.

However, the failure of the medical panel did lead to the development of the asbestos docket, which has proven over several decades to be the more effective process in handling these claims.

Section 31-304 was enacted in 1955 and revised in 1961 to allow a superior court judge to order the destruction of ten-year-old workers' compensation agreements filed in the superior court. This harkens back to when workers' compensation appeals were taken de novo to the superior court. This provision has been obsolete since the 1980 creation of the Compensation Review Division, now Compensation Review Board.

Section 31-276a places the Workers' Compensation Commission within the Department of Labor. This provision has been obsolete since the passage of Public Act 91-339 which centralized and consolidated the powers of the commission into the Chairman of the Workers' Compensation Commission. The repeal of 31-276a is another necessary step to conform the law to more accurately reflect the longstanding relationship between the Workers' Compensation Commission (and most agencies) and the Department of Administrative Services.

In conclusion, S.B. 907 improves the accessibility to the workers' compensation system by removing the clutter of anachronistic statutes, and in so doing, moves the Workers' Compensation Act closer to being an accurate statement of the current law. Likewise, the WCC seeks to update the nomenclature of the system's adjudicators to accurately reflect their function, and in so doing, clarify for all parties, the role of the person who is adjudicating their case. The other proposals are simply common sense amendments to conform the statute to longstanding and current administrative practice.